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9 IN THE UNITED STATES BANKRUPTCY COURT  
10 FOR THE DISTRICT OF OREGON

11 In re  
12 Dr. Bott, LLC,  
13 Debtor.  
14  
15

No. 14-32565-tmb11

DECLARATION OF GARY I. GRENLEY  
IN SUPPORT OF DEBTOR'S OPPOSITION  
TO MOTION FOR RELIEF FROM STAY

16 I, Gary I. Grenley, do hereby declare as follows:

17 1. I make this declaration based upon my own personal knowledge. I am one of the  
18 responsible attorneys at Garvey Schubert Barer who was authorized by Judge Alicia A. Fuchs of the  
19 Multnomah County Circuit Court to represent Dr. Bott, LLC in the pending state court litigation  
20 entitled *Dr. Bott, LLC et. al. v. Dr. Roderich Bott*, Multnomah County Circuit Court Case No. 1112-  
21 15996 (the "state court case"). Judge Fuchs' approval of our firm's representation was rendered in  
22 open court on April 1, 2014 as a result of the disqualification of prior counsel for Dr. Bott, LLC.

23 2. Soon after retention and approval of our firm to represent Dr. Bott, LLC, I commenced  
24 reviewing all of the pertinent pleadings in the state court case pending in Multnomah County Circuit  
25 Court for almost two and a half years. My review included some half-dozen pending motions as well  
26 as extremely detailed pleadings filed in both the state court case and in a mandamus proceeding in the

1 Oregon Supreme Court which summarized over a year of extremely hard fought and acrimonious  
2 litigation driven primarily by the non-operating member and seventy-five percent owner of Dr. Bott,  
3 LLC (Dr. Roderich Bott) against the twenty-five percent owner and operating member (Eric  
4 Prentice), as well as the LLC itself. The litigation was commenced by the LLC due to the corporate  
5 stalemate between the owners for the purpose of obtaining Court ordered mediation, and if mediation  
6 failed, then for an order allowing the LLC to purchase Dr. Roderich Bott's interest in the LLC.  
7 Dr. Roderich Bott's response was to allege derivative claims against Eric Prentice and direct claims  
8 against the LLC seeking dissolution. Dr. Roderich Bott has not asserted any direct claims against  
9 Eric Prentice. Likewise, Eric Prentice has not asserted any claims against Dr. Roderich Bott or the  
10 LLC. As a result, the LLC is caught in the middle of this expensive litigation.

11 3. From my review of these pleadings, it became quite obvious that, whatever the merits  
12 of the competing claims were, the length and nature of the litigation had cost Dr. Bott, LLC so much  
13 money that it found itself on the verge of, or actually within, a state of insolvency. I also concluded  
14 that, if the state court case was to continue, it might cost Dr. Bott, LLC as much if not more than it  
15 had already spent in the litigation to date. It was reported to me that the state court case had cost the  
16 LLC more than \$1 million in attorneys' fees and costs already, a figure I didn't doubt from my  
17 pleading review.

18 4. As we told Judge Fuchs at our first appearance before her, we had agreed to become  
19 involved in the state court case not to continue the litigation, but to explore opportunities to resolve  
20 the case and save the LLC's business. It soon became apparent to me that the majority  
21 shareholder/non-operating member, Dr. Roderich Bott, was less interested in resolution than in  
22 continuing to litigate through his attorney, Katherine Heekin, who also seemed eager to continue the  
23 blood bath without regard to its cost or futility.

24 5. During my review of the pleadings, I learned that there were a number of pending  
25 motions, including a motion to dismiss the LLC's affirmative claims, without prejudice, a motion for  
26 summary judgment to dismiss the LLC's affirmative claims, a motion to appoint a receiver for the

1 LLC and to place Eric Prentice on administrative leave, and a motion to compel production of  
2 privileged communications between Eric Prentice's personal counsel and the LLC's former counsel.  
3 With the exception of the motion to appoint a receiver (which appears unnecessary now that a  
4 bankruptcy case is pending), none of these motions would resolve any substantive issue in the case or  
5 make a substantive determination of who should control the LLC. I estimated that the cost to respond  
6 to all of these motions would well exceed \$25,000 in fees alone.

7 6. My ultimate conclusion was that the state court case was achieving nothing for the  
8 parties but was enriching those attorneys involved, and that no amount of continued litigation would  
9 accomplish anything of significance no matter who won or lost; (with the LLC bearing a significant  
10 portion of its costs). Soon after completion of my review of the pleadings, I communicated with  
11 Judge Fuchs asking her to abate all pending motions and to order the parties into a mandatory  
12 mediation. Judge Fuchs did not immediately act upon my request. On May 1, several of the  
13 Dr. Bott, LLC creditors filed a Petition for Involuntary Bankruptcy which commenced this  
14 proceeding in Bankruptcy Court.

15 7. I am still of the opinion, now more than ever due to the bankruptcy filing, that a  
16 continuation of the state court case is senseless, will not benefit any of its parties, but will force  
17 Dr. Bott, LLC to further deplete its scant resources as it will be required to be represented by legal  
18 counsel. Moreover, I believe that the continued litigation of the state court case will result in an  
19 unnecessary distraction to the LLC's management.

20 DATED this 30<sup>th</sup> day of May, 2014.

21 GARVEY SCHUBERT BARER

22 By 

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